

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) For Authority to, Among Other Things, Increase Its Authorized Revenues For Electric Service in 2003, And to Reflect That Increase in Rates.

Application 02-05-004
(Filed May 3, 2002)

Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Southern California Edison Company.

Investigation 02-06-002
(Filed June 6, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING MOTION TO ACCEPT TESTIMONY**

On August 8, 2002, the Assigned Commissioner issued a ruling (ACR) that, among other things, established various procedural rules along with the schedule for this proceeding. By letter dated December 16, 2002, 10 days after the deadline for service of intervenor testimony, the Greenlining Institute/Latino Issues Forum (Greenlining/LIF) requested an extension of time to serve its testimony.¹ Greenlining/LIF served the prepared direct testimony of John C.

¹ Relative to the schedule contemplated by the Commission's Rate Case Plan, the schedule established by the ACR for this proceeding had already deferred most events by three months. The deferral was allowed to give the Office of Ratepayer Advocates (ORA) additional time needed to complete its review and analysis of Southern California Edison Company's (SCE) application. Because the interval of time between the time for service of ORA testimony and intervenor testimony was left unchanged, all

Footnote continued on next page

Gamboa and of Michael Phillips with its December 16 letter. Neither SCE nor any other party objected to the requested extension of time, and the undersigned Administrative Law Judge (ALJ) granted the request by bench ruling on December 19, 2002.²

At the December 19, 2002 hearing, Greenlining/LIF requested permission to introduce additional witnesses in this proceeding at a later date.³ The ALJ deferred ruling on this request and instead directed Greenlining/LIF to (1) serve any such testimony in written form and (2) make a concurrent request before the Commission justifying the appropriateness of introducing such testimony.⁴ On January 8, 2003, Greenlining/LIF served the proposed testimony of Gelly Borromeo on SCE's procurement practices.⁵ The Borromeo testimony addresses the use by SCE and other utilities of the exclusions permitted under Section 8.5 of General Order 156. An accompanying letter set forth reasons why Greenlining/LIF believed it was appropriate to bring the Borromeo testimony before the Commission in this proceeding. By bench ruling made on January 10, 2003, the ALJ stated that the request that was directed at the December 19, 2002 hearing must be in the form of a motion.⁶ The ruling further stated that the

intervenors received a similar three-month extension of time, to December 6, 2002, to serve their testimony.

² Tr. v. 29, p. 2513.

³ *Id.*, p. 2534.

⁴ *Id.*

⁵ Greenlining/LIF's transmittal letter is dated January 8, 2003. However, the Borromeo testimony was served electronically the evening of January 7, 2003.

⁶ Tr. v. 34, p. 3060.

motion should explain “why the testimony should be received in the face of the Assigned Commissioner’s Ruling that clearly indicated the schedule for intervenor testimony in this case.”⁷ Greenlining/LIF then filed its *Motion to Accept Additional Testimony of Gelly Borromeo on Behalf of the Greenlining Institute and Latino Issues Forum* (Motion) on January 16, 2003. SCE filed a response on January 21, 2003. The motion is the subject of this ruling.

In support of its request, Greenlining/LIF notes that SCE did not raise an objection to the initial request at the time it was made on December 19, 2002. However, this misconstrues the circumstances that led the ALJ to require Greenlining/LIF to file the subject motion. Under the procedure established by the ALJ, there was nothing to which SCE could object until the motion was filed on January 16, 2003. Greenlining/LIF also states that it was following the ALJ’s instructions when it served the Borromeo testimony on January 8. However, in directing Greenlining/LIF to file a motion in order to have its request considered, the ALJ did not guarantee or otherwise provide assurance that such request would be automatically granted.

The substantive justification offered by Greenlining/LIF in support of its request is that Gelly Borromeo is “an expert on Women and Minority Business Enterprises (WMBE) who possesses valuable insight and expertise on WMBE contract programs” and that the testimony “is in direct response to the testimony offered by [SCE witness] Joe Alderete at the December 19 hearing.”⁸ Unfortunately, Greenlining/LIF fails to show why it was unable to timely

⁷ *Id.*

⁸ Motion, p. 3.

present Ms. Borromeo's insight and expertise by serving her prepared testimony in accordance with the August 8, 2002 ACR. SCE served the prepared testimony of Joe Alderete on October 1, 2002, more than nine weeks prior to the date established for service of intervenor testimony (December 6), and nearly 11 weeks prior to the extended deadline allowed for serving the testimony of Greenlining/LIF (December 16).⁹ There is no basis for concluding that Greenlining/LIF lacked opportunity to conduct discovery with respect to the Alderete testimony and to prepare and serve its direct testimony on a timely basis.

If Greenlining/LIF were able to demonstrate that information obtained on cross-examination of SCE witness Alderete on December 19, 2002, was sought prior to that date but unreasonably withheld by SCE during discovery, and that such information was otherwise unavailable until that date, it might have justification for its request. It has not made such a demonstration. Instead, Greenlining/LIF in effect is attempting to justify late submission of the testimony by claiming it is a response to the Alderete cross-examination testimony. However, the rules governing this proceeding do not provide for such responsive testimony, and a departure from such rules has not been justified.

In significant part, the observations and recommendations regarding procurement exclusions set forth in the testimony of Gelly Borromeo pertain to other utilities as well as SCE. I note that Greenlining/LIF has filed a petition for rulemaking (P.02-10-035) that would address for all subject utilities the issues raised in the Borromeo testimony. To the extent that the Commission approves

⁹ Mr. Alderete's prepared direct testimony is set forth in portions of Exhibit 73.

the petition, Greenlining/LIF will have an opportunity to address several if not most or all of the issues set forth in the Borromeo testimony.

I note that in its response to the Motion, SCE states that Ms. Borromeo was a speaker at the October 22, 2002 public participation hearing in this proceeding; that “the Commission already has before it Ms. Borromeo’s testimony on SCE’s Women, Minority, and Disabled Veterans program and SCE’s exclusions;” and that “[f]urther testimony may be redundant.”¹⁰ Since the additional testimony that is the subject of this ruling would only be redundant if Ms. Borromeo’s October 22 statement were in evidence in this proceeding, and SCE is presumably aware that public witness testimony given at a public participation is typically not sworn, subject to cross-examination, or received into evidence, SCE’s statements that the October 22 testimony is before the Commission and may be redundant may constitute a waiver of any objection to the receipt of the October 22 Borromeo testimony into evidence. Parties should be prepared to address this matter at the first day of rebuttal hearings on February 24, 2003.

¹⁰ SCE response to the Motion, p. 3, Footnote 8. Ms. Borromeo’s October 22, 2002 statement appears at Tr. v. 6, pp. 175-78. The portion thereof that pertains to exclusions appears at p. 176, line 12 – p. 177, line 8.

Therefore, **IT IS RULED** that the Greenlining/LIF *Motion to Accept Additional Testimony of Gelly Borromeo on Behalf of the Greenlining Institute and Latino Issues Forum* is denied.

Dated February 4, 2003, at San Francisco, California.

/s/ MARK S. WETZELL

Mark S. Wetzell
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Motion to Accept Testimony on all parties of record in this proceeding or their attorneys of record. In addition, service was also performed by electronic mail.

Dated February 4, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.